



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2022-A-0011

**RE: Approving Final Amendments to 7 DE Admin. Code 1103:
*Ambient Air Quality Standards***

Date of Issuance: June 27, 2022

Effective Date of the Amendment: August 11, 2022

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §6010(a) and (c), and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards* ("Amendments"). The Department's Division of Air Quality ("DAQ") is proposing to amend 7 DE Admin. Code 1103 to (1) update the National Ambient Air Quality Standards ("NAAQS") for ground level ozone; (2) update the Code of Federal Regulations ("CFR") reference dates for all NAAQS; and to (3) remove the sulfur dioxide ("SO₂") 24-hour and annual primary standards that have been revoked by the United States Environmental Protection Agency ("EPA").

Each of the above-referenced regulatory updates is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations. The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 *Del.C.* §§6010(a) and (c).

The NAAQS are established by the EPA for six “criteria air pollutants:” ground-level ozone, SO₂, particulate matter, nitrogen oxide, carbon monoxide, and lead. The NAAQS have both primary and secondary standards. Primary standards are required to protect public health, while secondary standards protect the environment.

The Clean Air Act (“CCA”) requires states to implement standards and determine whether they are in compliance with the NAAQS. The CCA also requires the EPA to periodically review the science upon which the standards are based and the standards themselves, to determine whether the standards should be revised.

In 2015, the EPA promulgated revised primary and secondary ozone NAAQS for ground-level ozone via the EPA’s final rule, published on October 26, 2015, as set forth in Volume 80 of the Federal Register (“FR”), beginning on page 65,292. In 2010, the EPA reviewed the NAAQS for SO₂ and determined that the available science showed that a shorter-term one-hour average measurement of SO₂ would be more protective of human health. Consequently, the EPA revoked the SO₂ 24-hour primary standard and the SO₂ annual primary standard. The final rule was published on June 22, 2010, in Volume 75 of the FR, beginning on Page 35,520.

The above changes were subsequently codified in Title 40 of the CFR, Sections 50.19 and 50.17, respectively. In addition to updating these standards, the proposed regulatory Amendments also include updating the federal reference dates, so that Delaware’s regulation references the most current methodologies set by the EPA for measuring criteria pollutant levels.

Currently, the primary and secondary ozone NAAQS as set forth in 7 DE Admin. Code 1103, Section 6.0, reflect an outdated standard of 0.075 parts per million (“ppm”). The federal regulatory standards, established by EPA in 2015, are set at 0.070 ppm. This proposed regulatory action will amend the current ozone standards in Delaware’s regulations to 0.070 ppm to mirror that of EPA’s current regulations and will update the CFR reference dates throughout the rule to July 1, 2019, to ensure references to methodologies for measuring criteria pollutant levels are the most recent.

Lastly, as noted above, the Department also proposes to remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA. Again, each update referenced above is being proposed by the Department so that Delaware’s regulations maintain consistency with the EPA’s current federal regulations (40 CFR 50.19: 80 FR 65292 and 40 CFR 50.17: 75 FR 35520).

The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations* (“*Register*”). Accordingly, the Department held the public hearing regarding this regulatory action on October 27, 2021. It should be noted that the Department received no comments regarding this proposed regulatory action. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Following her review of the hearing record (“*Record*”), Hearing Officer Vest prepared her Hearing Officer’s Report, dated March 10, 2022 (“*Report*”), which expressly incorporated into the *Record* the Department’s proposed Amendments, attached to her Report as Appendix “A.” The Report documents the proper completion of the required regulatory development process, establishes the *Record*, and recommends the adoption of the Department’s proposed Amendments, as attached to the Report as Appendix “A.”

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed amendments to 7 DE Admin. Code 1103, *Ambient Air Quality Standards*. As noted previously, the proposed Amendments will update the Department’s DAQ regulations regarding (1) the NAAQS for ground level ozone; (2) the CFR reference dates for all NAAQS; and will (3) remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA. Each update is being proposed by the Department so that Delaware’s regulations maintain consistency with the EPA’s current federal regulations.

Based on the *Record* developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed Amendments, and that the same is well-supported. I further find that the Department’s experts fully developed the *Record* to support adoption of the proposed Amendments, which will enable the Department to ensure consistency regarding the EPA’s current federal regulations.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards*, be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards*, pursuant to 7 *Del.C.* §6010(a) and (c);

2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;

3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed Amendments will enable the Department to update the Department's DAQ regulations regarding the NAAQS for ground level ozone and the CFR reference dates for all NAAQS, and will also remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA, so that Delaware's regulations maintain consistency with the EPA's current federal regulations;

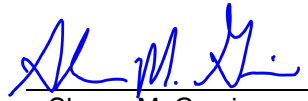
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as published in the October 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

7. The Hearing Officer's Report, including its established Record and the recommended proposed Amendments, as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving as final the proposed Amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.



Shawn M. Garvin
Secretary

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ATTACHMENT:

Appendix "A": Proposed Reg, Amendments (7 DE Admin. Code 1103, *Ambient Air Quality Standards*)